

FILED**FILED**

2010 MAR 19 PM 4:03

CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

BY _____

ACKERMANN & TILAJEF, P.C.
 Craig J. Ackermann, CA Bar No. 229832
 Devin C. Coyle, CA Bar No. 267194
 1180 South Beverly Drive, Suite 610
 Los Angeles, CA 90035
 Telephone: (310) 277-0614
 Facsimile: (310) 277-0635
 cja@laborgators.com

WASSERMAN, COMDEN, CASSELMAN & ESENSTEN, L.L.P.
 Melissa M. Harnett, CA Bar No. 222366
 Jesse B. Levin, CA Bar No. 268047
 5567 Reseda Boulevard, Suite 330
 Post Office Box 7033
 Tarzana, CA 91357-7033
 Telephone: (818) 705-6800
 Facsimile: (818) 996-8266
 mharnett@wccelaw.com
 Attorneys for Plaintiff and the putative class

**UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA
 WESTERN DIVISION**

**ROBERT COHEN, individually and
 on behalf of all others similarly
 situated,**

Plaintiff,

v.

**UNITED HEALTHCARE
 SERVICES, INC.,**

Defendant.

Case No. 10-2027 CAS (AN)

**PLAINTIFF'S ORIGINAL
 COLLECTIVE/CLASS ACTION
 COMPLAINT FOR (1) UNPAID
 OVERTIME PAY (FLSA); (2)
 UNPAID OVERTIME PAY
 UNDER STATE LAW; (3)
 INACCURATE PAYSTUBS; (4)
 MISSED MEAL/REST PERIOD
 PREMIUM PAY; (5) WAITING
 TIME PENALTY PAY; (6)
 UNFAIR BUSINESS
 PRACTICES; & DEMAND FOR
 JURY TRIAL**

1 Plaintiff Robert Cohen ("Plaintiff"), individually and on behalf of all those
2 similarly situated, by and through his counsel, brings this Collective/Class Action
3 Complaint ("Complaint") against Defendant United HealthCare Services, Inc.,
4 ("Defendant UHCS"), on personal knowledge with respect to himself and his own
5 acts, and on information and belief as to other matters, alleges as follows:

6 **I. JURISDICTION**

7 1. This Court has subject matter jurisdiction over Plaintiff's federal
8 claims pursuant to the Fair Labor Standards Act of 1938 ("FLSA"), 29 U.S.C.
9 §216(b), and 28 U.S.C. §1331 and 28 U.S.C. §1337. This Court has supplemental
10 jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. §1367(a),
11 because the state law claims are so related to the federal claims that they form part
12 of the same case or controversy between Plaintiff and Defendant UHCS. In the
13 alternative, this Court has jurisdiction under the Class Action Fairness Act of 2005,
14 28 U.S.C. §§ 1332(d), 1453, and 1711-1715, because the amount in controversy
15 exceeds \$5 million and at least one member of the putative class is a citizen of a
16 state different from the Defendant.

17 **II. VENUE**

18 2. Venue is proper in this district pursuant to 28 U.S.C. 1391(b) and (c),
19 because Defendant UHCS transacts business in Los Angeles County and its
20 registered agent is located in Los Angeles County within this District and this
21 Division.

22 **III. INTRODUCTION**

23 3. Plaintiff brings claims individually and as part of a collective action,
24 under the FLSA, 29 U.S.C. §216(b), on behalf of all hourly, non-exempt
25 employees of UHCS employed in the positions of Lead Generator ("LG"),
26 Licensed Sales Representative ("LSR") and Licensed Sales Professionals ("LSP")
27 anywhere in the United States at any time from March 19, 2007 through the
28 present (the "Nationwide Class"). The individual and collective action claims are

1 for failure to pay overtime wages for all overtime hours worked, and attorneys'
2 fees and costs under FLSA §§207 and 216(b), based on Defendant UHCS's
3 systematic failure to pay for its LSRs, LGs and LSPs daily "off-the-clock" working
4 time consisting of up to 40 minutes each day, during which (a) at the start of each
5 shift, the LGs, LSRs and LSPs boot up their computer stations, including 15
6 software programs that need to be running before LGs, LSRs and LSPs can begin
7 fielding calls from potential customers; and (b) at the scheduled end of each shift,
8 the LGs, LSRs and LSPs are logged out of UHCS's time-keeping software before
9 completing all work-related tasks, including logging out of all 15 software
10 programs and completely shutting down their computer stations.

11 4. Plaintiff also brings claims individually and as a true class action, on
12 behalf of all hourly, non-exempt employees of UHCS in California employed in
13 the positions of LG, LSR and/or LSP at any time from March 19, 2006 through the
14 present (the "California Class"). The individual and class action claims of the
15 California Class are for failure to pay overtime compensation (the "off-the-clock"
16 claims), as well as for inaccurate wage statements, failure to pay premium pay for
17 missed or late meal and rest periods, waiting time penalties, interest, and attorneys'
18 fees and costs under Labor Code sections 203, 221, 224, 226, 226.7, 510, 512,
19 1194, 218.5 and California Code of Civil Procedure 1021.5. The individual and
20 class claimants also request, under California Business & Professions Code
21 §§17200-17208, injunctive relief and restitution arising from Defendant UHCS's
22 failure to pay overtime wage for all overtime hours worked, as well as for failure to
23 pay for missed meal and rest break premium pay, and for UHCS's failure to pay all
24 wages due to departing employees on their separation of employment, as required
25 by California Labor Code sections 201 through 203.

26 5. Plaintiff was employed by Defendant UHCS and was told as part of
27 the recruitment process that he would earn \$16.50 per hour, plus commissions,
28 such that his annual compensation would be \$60,000 to \$70,000. In fact, Plaintiff,

1 like the members of the Nationwide Class, was not paid at all for his “ramp-up” or
2 “boot-up” time, and for his working time after logging off of Defendant UHCS’s
3 time-keeping system but before completely logging out at the end of the day.
4 Defendant UHCS’s actions were willful and in violation of the FLSA and the
5 California Labor Code.

6 6. Moreover, Defendant UHCS failed to pay missed meal and rest break
7 premium pay to Plaintiff and the California Class whenever they were unable to
8 take timely meal and rest breaks due to on-going sales calls. As a result of its
9 failure to pay for pre- and post-liminary activities, as well as missed meal and rest
10 break premium pay, Defendant UHCS also issued inaccurate wage statements to
11 Plaintiff and the California Class. Finally, Defendant UHCS’s policy of paying
12 separation pay to departing employees, including Plaintiff and all former
13 employees within the California Class, only at the next regularly-scheduled
14 payday, rather than immediately or within 72 hours of the separation date, violates
15 Sections 201 through 203 of the California Labor Code.

16 **IV. THE PARTIES**

17 7. Plaintiff Robert Cohen, who resides in Orange County, California, is a
18 former employee of Defendant UHCS who worked as a LG and LSR from around
19 August 2009 through December 3, 2009 at Defendant UHCS’s call center facility
20 in Santa Ana, California.

21 8. Upon information and belief, Defendant United HealthCare Services,
22 Inc., is a Minnesota corporation doing business in, among other places, California,
23 with its principal place of business in Minnetonka, Minnesota. Defendant UHCS
24 employs LGs, LSRs and LSPs at seven call centers located throughout the United
25 States.

26 9. At all times from March 19, 2006 through the present (the “California
27 Class Period”), including from March 19, 2007 through the present (the
28 “Nationwide Class Period”), Defendant UHCS has been an “enterprise engaged in

1 commerce” for purposes of the FLSA with annual revenues in the billions of
2 dollars. Defendant UHCS’s parent corporation, United Health Group (“UHG”), is
3 a Fortune 25 company with over \$70 billion in reported revenues in 2009. The
4 Ovations Business Unit within United Health Group, in which Plaintiff, the
5 California Class and the Nationwide Class were all employed, generated \$7.9
6 billion in revenues in 2009.

7 10. Significantly, throughout the California Class Period, including the
8 Nationwide Class Period, Defendant UHCS employed numerous employees,
9 including Plaintiff, who were engaged in activities constituting “interstate
10 commerce” under the FLSA, including, *inter alia*, answering incoming telephone
11 inquiries from potential customers scattered across the United States and enrolling
12 out-of state customers in health insurance plans by phone.

13 **V. FACTUAL ALLEGATIONS**

14 **A. Facts Relevant to Plaintiff’s and the Nationwide Class’ Overtime Claim**

15 11. In its Ovations Business Unit (“Ovations”), Defendant UHCS
16 employs approximately 3,600 employees nationwide, the majority of whom are
17 employed as LGs, LSRs and LSPs (the “Telesales employees”), at seven different
18 call centers, two of which are located in California. Defendant UHC employs
19 several hundred Telesales employees at any one time at its call centers located in
20 California. In addition to its California call centers, Defendant UHCS’s Ovations
21 Business Unit operates call centers in, among other places, Green Bay, Wisconsin,
22 and Minneapolis, Minnesota.

23 12. For several months during the California Class Period, including the
24 Nationwide Class Period, Plaintiff worked as a LG and LSR at Defendant’s call
25 center located in Santa Ana, California.

26 13. As a LG and LSR, Plaintiff’s job duties included, *inter alia*,
27 answering telephone calls from potential customers, and attempting to enroll them
28 in one or more of the various insurance products offered by Defendant UHCS

1 and/or arranging for meetings between the potential customers and outside sales
2 people known as field agents.

3 14. As an entity with billions of dollars in annual sales employing
4 numerous employees engaged on an annual basis in the selling of health insurance
5 policies to individuals across the United States, Defendant UHSC at all times
6 relevant hereto was and is an enterprise subject to the jurisdiction of the FLSA.

7 15. During the California Class Period, including the Nationwide Class
8 Period, Plaintiff's job duties were similar, if not identical to, the job duties of other
9 current and former hourly, non-exempt Telesales employees employed by
10 Defendant in California and at the other seven call centers in the United States,
11 including LGs, LSRs and LSPs. In fact, the job duties of the LSPs were and are
12 substantially similar, if not identical, to the job duties of LGs and LSRs.

13 16. As part of their job duties, Defendant UHCS's Telesales employees
14 needed to be "up and running" no later than five minutes after the scheduled start
15 of each shift, which meant that if their shift started at 8:00 a.m. they needed to be
16 ready to receive customer calls at 8:05 a.m.

17 17. In order to be "up and running" by the required start time, however,
18 Defendant UHCS's Telesales employees needed to boot up their computers and log
19 into the following 15 separate software programs, each on a different screen: (1)
20 Windows NT, (2) HR Direct, (3) IEX Agent Web Station, (4) Voice Mail, (5)
21 bConnected, (6) Cosmos, (7) Cosmos IBM, (8) Marx, (9) GPS and RxConnections,
22 (10) ILSA, (11) United Health Advisors, (12) UNIX.MYSME ID, (13) Rx Claims,
23 (14) OCMS and (15) EDSS. These programs each required a few minutes to open
24 up. In order to log in, Telesales employees also needed to enter a unique password
25 for each program. (The tasks associated with the "log in" process will be referred
26 to hereinafter as the "preliminary work activities"). Given the number of programs
27 and the amount of time it took to open each one, it was not possible to complete
28 the preliminary work activities in the five minutes between the scheduled start time

1 and the time at which Plaintiff and Defendant UHCS's other Telesales employees
2 were required to be "up and running" and ready to receive calls. Nor, for that
3 matter, was it possible to complete these activities in a *de minimis* amount of time.

4 18. In other words, Plaintiff and Defendant UHCS's other Telesales
5 employees were required to be logged into their computers no later than five
6 minutes after their scheduled start time, but the log in process took anywhere from
7 10 to 30 minutes to complete. Therefore, Plaintiff and Defendant UHCS's other
8 Telesales employees on a nationwide basis needed to arrive to work significantly
9 before their scheduled start times in order to complete the lengthy "log in" process
10 while still complying with the start-time requirements.

11 19. In fact, in order to be "up and running" by the required start times,
12 Defendant UHCS's Telesales employees across the nation routinely arrived at
13 work between 10 to 30 minutes early and began their "log in" process significantly
14 prior to their scheduled start time.

15 20. From at least March 2006 through the present, Defendant UHCS was
16 aware that its Telesales employees were engaged in the preliminary work activities
17 consisting of booting up their computer systems and numerous required programs
18 and windows on an "off-the-clock" basis. Moreover, Defendant UHCS acquiesced
19 in and/or supported the practice of its Telesales employees failing to include the
20 working time associated with the preliminary work activities on the company's
21 electronic time-keeping software.

22 21. For example, on October 12, 2009, when Plaintiff sent an email
23 asking his supervisor whether his timesheet for payroll purposes should reflect his
24 actual arrival time at the office at which time he began work, or, alternatively, the
25 time after his computer system indicated, "Ready", following the boot-up process,
26 his supervisor instructed him to note the time his computer was "Ready", rather
27 than the time he started working, thereby improperly excluding the time associated
28 with the preliminary work activities from payable time. A true and correct copy of

1 the October 12, 2009 email exchange between Plaintiff and his supervisor is
2 annexed hereto as Exhibit A and incorporated herein by reference.

3 22. Significantly, Defendant UHCS did not compensate its LGs, LSRs
4 and LSPs nationwide, including Plaintiff, in any way for their “off-the-clock” time
5 spent on the preliminary work activities prior to the start of each shift, including
6 their time spent booting up their computers and loading the 15 or so programs that
7 needed to be running in order for the Telesales force to be “ready” to field calls.
8 The preliminary work activities took up to 30 minutes to complete.

9 23. Likewise, Plaintiff and Defendant UHCS’s LGs, LSRs and LSPs
10 nationwide were all required to clock out before logging out of Defendant UHCS’s
11 computer system at the end of his and their shifts, and could not go home until
12 their computers were completely shut down. (The tasks associated with shutting
13 down the computer system after logging off from the time-keeping software will
14 be referred to hereinafter as the “postliminary work activities”). The postliminary
15 work activities took up to 10 minutes to complete. Like Defendant UHCS’s other
16 Telesales employees, Plaintiff was not compensated in any way for the time spent
17 on his postliminary work activities.

18 24. Plaintiff and Defendant UHCS’s other Telesales employees spent up
19 to 40 minutes of unpaid time per day on preliminary and postliminary work
20 activities.

21 25. Significantly, Defendant UHCS was aware that Plaintiff and its
22 Telesales employees needed to engage in “off-the-clock” work booting up and
23 shutting down their computer programs and computers in order to be ready to field
24 calls no later than five minutes after the scheduled start of each shift, but
25 Defendant UHCS impeded its Telesales employees from complaining about having
26 to work “off-the clock” by repeatedly informing them that overtime was not
27 authorized and by threatening to discipline any employees who were on the clock
28 for more than 8 hours.

1 26. The fact that Defendant UHCS required its LGs, LSRs and LSPs to be
2 “ready” to field calls no later than five minutes after the start of each shift, having
3 completed their “log in” process and the preliminary activities, while at the same
4 time telling its Telesales employees that overtime was not authorized, created a
5 situation where Telesales employees nationwide were implicitly encouraged to
6 work “off-the-clock” without being able to complain about being underpaid
7 without risking disciplinary action for working unauthorized overtime.

8 27. As a result of the foregoing, Plaintiff, like his similarly-situated
9 Telesales employees in California and across the nation throughout the California
10 Class Period, including the Nationwide Class Period, regularly worked more than 8
11 hours per day and more than 40 hours per week, but did not receive overtime
12 compensation at the legally-required overtime rate of 1.5 times his and their
13 regular rate of pay for all hours worked over 40 hours in a week and/or over 8
14 hours in a day under California law for the time spent “off the clock” performing
15 their preliminary and postliminary work activities.

16 28. Defendant UHCS’s violation of the FLSA with respect to non-
17 payment of regular and overtime wages for preliminary and postliminary work
18 activities was willful. Specifically, throughout the California Class Period,
19 including the Nationwide Class Period, Defendant UHCS knew or should have
20 known that its Telesales employees nationwide were engaged in “off-the-clock”
21 work-related tasks of booting up their computers and programs before they
22 electronically clocked in, and it also knew that its Telesales employees nationwide
23 performed work-related tasks after logging out of Defendant UHCS’s time-keeping
24 software.

25 29. Furthermore, throughout the California Class Period, including the
26 Nationwide Class Period, Defendant UHCS knew that the preliminary and
27 postliminary activities performed by its Telesales employees nationwide were
28 compensable under the FLSA and that the preliminary and postliminary activities

1 performed by its Telesales employees in California were compensable under the
2 FLSA and/or California law, yet it intentionally and willfully failed to pay its
3 Telesales employees, including Plaintiff, overtime wages due for their preliminary
4 and postliminary activities performed before and after the start of its Telesales
5 employees' shifts. This was true on a nationwide basis throughout the California
6 Class Period and throughout the Nationwide Class Period for the California Class
7 and the Nationwide Class, respectively.

8 **B. Facts Relevant to the California Class's Meal and Rest Period Claims**

9 30. Throughout the California Class Period, as a result of the continuous
10 loop of phone calls received by Plaintiff and the California Class, it was not
11 infrequent for Defendant UHCS's Telesales employees in California, including
12 Plaintiff, to be fielding sales calls at the fifth hour or even through the sixth hour of
13 his and their shifts, which made it difficult, if not impossible, for them to take a 30
14 minute off-duty meal period on or before the fifth or even sixth hour of their shifts.

15 31. Similarly, there were numerous occasions during the California Class
16 Period when Defendant UHCS's Telesales employees in California were in the
17 middle of sales calls when the time arrived for their statutory rest breaks.

18 32. Throughout the California Class Period, Defendant UHCS's policy
19 was to encourage its Telesales employees in California to complete their pending
20 sales calls when the times arrived for their statutory meal and/or rest periods.

21 33. Stated otherwise, on numerous occasions during the California Class
22 Period, Plaintiff and the members of the California Class were unable to take their
23 off-duty uninterrupted 30 minute meal breaks and/or their 10 minute rest breaks on
24 a timely basis, if at all.

25 34. Moreover, throughout the California Class Period, Defendant UHCS
26 had a uniform policy of failing to pay premium pay to Plaintiff and the California
27 Class for their missed or late meal and rest breaks.

1 35. In fact, Defendant UHCS has never paid a premium payment for a
2 missed meal or rest break to Plaintiff, and, on information and belief, it has never
3 paid a missed meal or rest break premium payment to any member of the
4 California Class throughout the California Class Period.

5
6
7 **C. Facts Relevant to the California Class's Inaccurate Paystub Claims**

8 36. As a result of Defendant UHCS's failure to pay Plaintiff and its
9 Telesales employees in California during the California Class Period for their
10 working time associated with pre- and postliminary activities, and for their missed
11 or untimely meal and rest breaks, Defendant UHCS's wage statements issued to
12 Plaintiff and the members of the California Class were consistently inaccurate
13 regarding actual hours worked and/or gross or net wages earned.

14 37. Stated otherwise, throughout the California Class Period, Defendant
15 UHCS has issued inaccurate itemized wage statements to all LG, LSRs and LSPs
16 in California, because, among other things, its itemized wage statements did not
17 contain accurate information about hours worked "off the clock" before and after
18 each shift, nor did they ever contain missed meal or rest break premium payments.

19 38. In addition, throughout the Class Period, Defendant UHCS failed to
20 accurately track and record commissions earned by its Telesales employees
21 pursuant to its applicable Sales Incentive Plan(s). For this additional reason,
22 Defendant UHCS's paystubs issued to Plaintiff and the California Class were
23 inaccurate throughout the Class Period.

24 **D. Facts Relevant to the California Class's Waiting Time Penalty Claims**

25 39. Throughout the California Class Period, Defendant UHSC's policy
26 with respect to delivering final paychecks to separating employees in California
27 was to send their final paycheck at the next upcoming scheduled payday.

1 40. When his employment ended on December 3, 2009, Plaintiff told his
2 supervisor that he was entitled to his final paycheck on that same day. The
3 supervisor said that a check would be mailed to him but did not specify when that
4 would happen.

5 41. Thereafter, Plaintiff called Defendant UHSC's Human Resources
6 Department to inquire about his final paycheck. Consistent with Defendant
7 UHSC's policy, the HR Department informed Plaintiff that he would received his
8 final paycheck at the next regularly scheduled payday.

9 42. During that conversation, Plaintiff told Defendant UHSC's HR
10 Department that California law required the immediate delivery of all wages owed
11 on the day of termination in the case of a termination, or within 72 hours in the
12 case of a separation, to which the HR Representative responded, "we comply with
13 federal law, not California law." Subsequently, however, Plaintiff received a final
14 paycheck approximately one week after his employment ended.

15 43. Even when Plaintiff received his final paycheck on an untimely basis,
16 he, like all the members of the California Class, did not receive all of the wages
17 due to him. Specifically, Defendant UHSC failed to include all of the unpaid
18 wages due for his and their off-the-clock work, as well as all of the missed meal
19 and rest break premium pay due. In addition, Defendant UHCS failed to include
20 any waiting time penalties owed to Plaintiff.

21 44. Defendant UHCS uniformly sent final paychecks to departing
22 employees in California on an untimely basis. Furthermore, Defendant UHCS's
23 final paychecks sent to departing employees who are members of the California
24 Class did not include all wages due to them and/or any waiting time penalties.

25
26 **VI. NATIONWIDE COLLECTIVE ACTION**

27 45. Plaintiff brings this action individually and as a collective action
28 (commonly referred to as an "opt-in" class) pursuant to Section 16(b) of the Fair

1 Labor Standards Act, 29 U.S.C. § 216(b). The “Nationwide Class” is defined as,
2 “All hourly, non-exempt Telesales employees of Defendant United Health Care
3 Services, Inc. employed in the United States at any time from March 19, 2007
4 through the present in the positions of Lead Generator, Licensed Sales
5 Representative and/or Licensed Sales Professional.”

6 46. Defendant UHCS willfully “suffered or permitted” the Nationwide
7 Class to perform labor without payment of overtime compensation at a rate of not
8 less than one and one half times their regular hourly rate for hours worked in
9 excess of forty in a week as required by federal law.

10 47. Plaintiff represents those other current and former employees and acts
11 on their behalf and interests as well as his own in bringing this action. These
12 similarly situated employees are known to Defendant UHCS and are readily
13 identifiable, and may be located through Defendant UHCS’s personnel records.
14 These similarly situated employees may readily be notified of this action, and
15 allowed to opt-in pursuant to 19 U.S.C. §216(b), for the purpose of collectively
16 adjudicating their claims.

17 **VII. CALIFORNIA CLASS ACTION**

18 48. Plaintiff also brings a true class action (commonly referred to as an
19 “opt-out” class) pursuant to Federal Rules of Civil Procedure Rule 23. The
20 “California Class” is defined as, “All hourly, non-exempt employees of Defendant
21 United Health Care Services, Inc. employed in the State of California at any time
22 from March 19, 2006 through the present in the positions of Lead Generator,
23 Licensed Sales Representative and/or Licensed Sales Professional.”

24 49. Defendant UHCS, inter alia, willfully “suffered or permitted” the
25 California Class to perform labor without payment of overtime compensation at a
26 rate of not less than 1.5 times their regular rate for hours worked in excess of forty
27 in a week and/or eight hours in a day as required by California law.

1 50. Numerosity. The potential members of the Class as defined are so
2 numerous that joinder of all the members of the class is impracticable. Although
3 the precise number of such persons is unknown, upon information and belief
4 Defendant UHCS has employed several hundred individuals who satisfy the
5 definition of the class, and who have been denied wages and payments due to them
6 because of Defendant's unlawful policies and practices.

7 51. Commonality. There are questions of law and fact common to the
8 class which predominate over any questions affecting only individual members of
9 the class, including but not limited to, whether Defendant UHCS:

10 a. Employed Telesales employees in positions subject to, and not exempt
11 from, the overtime requirements of California law;

12 b. Required, encouraged or permitted non-exempt Telesales employees
13 in California to work in excess of 40 hours per week and/or 8 hours per day;

14 c. Failed to pay non-exempt Telesales employees in California for time
15 worked in excess of 40 hours per week and/or 8 hours per day at the proper
16 overtime rate of 1.5 times their regular rate of pay;

17 d. Violated California Labor Code sections 510 and 1194 by failing to
18 pay California Telesales employees for time worked in excess of 40 hours per
19 week and/or 8 hours per day at the rate of 1.5 times their regular rate of pay;

20 e. Knowingly and intentionally failed to provide California Telesales
21 employees with accurate itemized wage statements showing total regular and
22 overtime hours worked including the proper overtime pay rate and overtime hours;

23 f. Failed to pay premium pay to employees for missed, untimely, or on-
24 duty meal periods and for missed rest periods in violation of Labor Code Sections
25 226.7, 512 and the applicable IWC Wage Order;

26 g. Violated California Labor Code sections §§201-203 by failing to
27 timely pay former employees wages due upon termination of employment;
28

1 h. Violated the Unfair Business Practice Act, California Business &
2 Professions Code, §§17200-17209 by failing to pay proper overtime compensation
3 to non-exempt employees during their employment, failing to provide accurate
4 itemized wage statements, and by failing to timely pay former employees wages
5 due upon termination of employment;

6 i. Additionally, there are common questions of law and fact as to the
7 proper measure of damages sustained by Plaintiff and the Class.

8 52. Typicality. Plaintiff's claims are typical of the claims of the
9 California Class in that he was subjected to the same violations of California law
10 and seeks the same type of damages, restitution, and other relief on the same
11 theories and legal grounds as the California Class he seeks to represent.

12 53. Adequacy of Representation. Plaintiff will fairly and adequately
13 represent and protect the interests of the California Class. Plaintiff's attorneys are
14 competent and experienced in litigating wage and hour class actions, like this one.

15 54. Predominance of Common Issues. Class Certification is also
16 appropriate under Fed.R.Civ.P. 23(b)(3) because questions of law and fact
17 common to the Class predominate over any questions affecting only individual
18 members of the Class, and because a class action is superior to other available
19 methods for the fair and efficient adjudication of this litigation.

20 **VIII. CAUSES OF ACTION**

21 **FIRST CAUSE OF ACTION**

22 **NATIONWIDE COLLECTIVE ACTION CLAIM FOR** 23 **FAILURE TO PAY OVERTIME WAGES FOR ALL HOURS WORKED** 24 **IN VIOLATION OF 29 U.S.C. §§207(a), 216(b)**

25 55. Plaintiff re-alleges and incorporates by reference each and every
26 allegation set forth in the preceding paragraphs.

1 56. Section 207(a) of the FLSA requires employers to pay covered non-
2 exempt employees overtime pay amounting to 1.5 times their regular rate of pay
3 for all hours worked in excess of 40 hours per week.

4 57. Specifically, Section 207(a) provides, in pertinent part: “ ... no
5 employer shall employ any of his employees who in any workweek is engaged in
6 commerce or in the production of goods for commerce, or is employed in an
7 enterprise engaged in commerce or in the production of goods for commerce, for a
8 workweek longer than forty hours unless such employee receives compensation for
9 his employment in excess of the hours above specified at a rate not less than one
10 and one-half times the regular rate at which he is employed.”

11 58. Throughout the Nationwide Class Period, Plaintiff and Defendant
12 UHCS’s Telesales employees across the nation spent more than fifty percent of
13 their time performing non-exempt work, did not directly supervise two or more of
14 Defendant’s employees simultaneously at all times, did not make fundamental
15 decisions of policy for the Defendant and/or were otherwise not exempt from the
16 overtime provisions of the FLSA.

17 59. Throughout the Nationwide Class Period, Plaintiff and Defendant
18 UHCS’s Telesales employees across the nation regularly worked in excess of forty
19 hours per week, but were not paid overtime compensation as required by 29 U.S.C.
20 §207(a) at a rate of one and one-half times his and their regular rates of pay.

21 60. Specifically, while Plaintiff and Defendant UHCS’s Telesales non-
22 exempt employees nationwide regularly worked shifts of at least 8 hours per day
23 for 5 days per week, they routinely worked “off the clock” from 10 to 30 minutes
24 per day to complete their preliminary and postliminary activities with the
25 knowledge and/or acquiescence of Defendant UHCS.

26 61. As a result, Defendant UHCS willfully failed to pay overtime wages
27 to Plaintiff and all “opt-in” national class members for all hours worked “off the
28 clock” in violation of 29 U.S.C. §207(a).

62. Section 216(b) of the FLSA creates a private right of action for violations of Section 207, and provides, in pertinent part: "Any employer who violates the provisions of section 206 or 207 of this title shall be liable to the employee or employees affected in the amount of their... unpaid overtime compensation, and in an additional equal amount as liquidated damages."

63. Pursuant to 29 U.S.C. § 207(a) and 216 of the FLSA, Plaintiff and Defendant UHCS's non-exempt Telesales employees nationwide are entitled to recover in this action the unpaid balance of the overtime compensation due to them at the rate of 1.5 times their regular rates of pay, plus an equal amount as liquidated damages and reasonable attorney fees and costs of the suit, for their time spent working on preliminary and postliminary activities, as described and defined herein, throughout the Nationwide Class Period.

SECOND CAUSE OF ACTION

CALIFORNIA CLASS ACTION CLAIM FOR FAILURE TO PAY OVERTIME COMPENSATION FOR ALL HOURS WORKED IN VIOLATION OF CALIFORNIA LABOR CODE §§ 510 and 1194

64. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

65. Section 510 of the Labor Code provides:

"... Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee (*sic*) and any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. . ."

1 66. Section 3(a)(1) of the applicable IWC Wage Order also mandates that
2 employers in California pay 1.5 times the employees' regular rate of pay for the
3 time that employees work more than eight hours in a day or forty hours in a week.

4 67. At all times relevant hereto, Plaintiff and the members of the
5 California Class were non-exempt for purposes of the overtime pay requirements
6 set forth in the California Labor Code and the applicable IWC Wage Order. In
7 addition, during the California Class Period, Plaintiff and Members of the Class
8 consistently worked more than 8 hours per day and more than 40 hours per week
9 performing the preliminary and postliminary work activities, the vast majority of
10 which was performed "off-the-clock".

11 68. By failing to correctly pay overtime compensation due to Plaintiff and
12 the members of the California Class, Defendant UHCS willfully and knowingly
13 violated the provisions of California law, including the Labor Code and the
14 applicable IWC Wage Order, which require overtime compensation to be paid to
15 non-exempt employees for all hours worked over 8 in a day and 40 per week.

16 69. As a result of Defendant's policy and practice of withholding
17 overtime compensation at the rate of 1.5 times the regular rate of pay, Plaintiff and
18 members of the California Class have been damaged.

19 70. Under Section 1194 of the Labor Code, an employee receiving less
20 than the legal overtime compensation applicable to the employee is authorized to
21 bring suit for the unpaid balance of the full amount of the overtime compensation
22 owed to him, including interest, reasonable attorney's fees and costs of the suit.

23 71. Accordingly, pursuant to Labor Code Section 1194, Plaintiff seeks to
24 recover unpaid overtime compensation for himself and the California Class in an
25 amount to be determined at trial.

THIRD CAUSE OF ACTION

**CALIFORNIA CLASS ACTION CLAIM FOR INACCURATE
WAGE STATEMENTS UNDER LABOR CODE § 226**

72. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

73. Section 226(a) of the California Labor Code provides:

“Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately when wages are paid by personal check or cash, an accurate statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and his or her social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of the hours worked at each hourly rate by the employee.”

74. Section 226(e) provides that an employee is entitled to recover \$50 for initial pay period in which a violation of Section 226 occurs and \$100 for each subsequent pay period, not to exceed \$4,000, as well as an award of costs and reasonable attorneys’ fees, for all pay periods in which the employer knowingly and intentionally failed to provide accurate itemized statements to the employee causing the employee to suffer injury.

75. As described above, throughout the California Class Period, Defendant UHCS issued inaccurate itemized wage statements to Plaintiff and members of the California Class containing incorrect information regarding the total hours worked and total wages earned by Plaintiff and members of the

1 California Class in that: (1) Defendant failed to include accurate information about
2 hours actually worked by Plaintiff and members of the California Class throughout
3 the California Class Period by improperly excluding time spent on the preliminary
4 and postliminary activities; (2) Defendant failed to include accurate information
5 about wages earned by Plaintiff and the members of the California Class for
6 missed, untimely and/or on-duty meal periods, and/or missed rest periods, because
7 premium wages for missed meal and rest periods were not included in the
8 paystubs' summary of gross wages earned for Plaintiff and the California Class;
9 and (3) Defendant routinely failed to accurate information about commissions
10 earned by Plaintiff and the California Class.

11 76. Defendant's failure to issue accurate itemized wage statements to
12 Plaintiff and members of the California Class during the California Class Period
13 has caused injury to Plaintiff and the members of the California Class in that their
14 wage statements were inherently confusing and hid the fact that Defendant UHCS
15 owed Plaintiff and the California Class overtime wages for working time spent on
16 the preliminary and postliminary activities; premium pay for missed meal and rest
17 breaks; and unpaid commissions. *See, Brewer v. Premier Golf Properties*, (2008)
18 168 Cal.App.4th 1243, 1254, at n. 9 (wage statement claim may be triggered by
19 failure to include missed meal period premium pay on wage statements); *Cicairos*
20 *v. Summit Logistics*, 133 Cal.App.4th at 954 ("If it is left to the employee to add up
21 the daily hours shown on the time cards or other records so that the employee must
22 perform arithmetic computations to determine the *total hours worked* during the
23 pay period, the requirements of section 226 would not be met").

24 77. As a result of Defendant's issuance of inaccurate itemized wage
25 statements to Plaintiff and Class Members in violation of Labor Code §226(a),
26 Plaintiff and the members of the California Class are each entitled to recover an
27 initial penalty of \$50, and subsequent penalties of \$100, up to an amount not
28

1 exceeding an aggregate penalty of \$4000 per Plaintiff and per every member of the
2 Class from Defendant pursuant to Section 226(e) of the Labor Code.

3 **FOURTH CAUSE OF ACTION**

4 **CALIFORNIA CLASS ACTION CLAIM FOR FAILURE TO PAY**
5 **PREMIUM PAY FOR MISSED MEAL AND REST PERIODS IN**
6 **VIOLATION OF CALIFORNIA LABOR CODE §§ 512, 226.7 AND**
7 **SECTIONS 11 AND 12 OF THE IWC WAGE ORDER**

8 78. Plaintiff re-alleges and incorporates by reference each and every
9 allegation set forth in the preceding paragraphs.

10 79. California Labor Code § 226.7(a) provides, “No employer shall
11 require any employee to work during any meal or rest period mandated by an
12 applicable order of the Industrial Welfare Commission.”

13 80. Section 11(A) of the applicable IWC Order¹ provides, in relevant part:
14 “No employer shall employ any person for a work period of more than five (5)
15 hours without a meal period of not less than 30-minutes, except that when a work
16 period of not more than six (6) hours will complete the day’s work the meal period
17 may be waived by mutual consent of the employer and the employee.”

18 81. Section 11(C) of the applicable IWC Order further provides, in
19 relevant part: “Unless the employee is relieved of all duty during a 30-minute meal
20 period, the meal period shall be considered an ‘on duty’ meal period and counted
21 as time worked.”

22
23
24
25
26
27 ¹ The IWC Wage Orders were updated periodically from January 1, 2002 through
28 January 1, 2006. However, the relevant provisions cited herein have not changed
during the Class Period.

1 82. Section 512(a) of the California Labor Code provides, in relevant part,
2 that:

3 “An employer may not employ an employee for a work period of more than
4 five hours per day without providing the employee with a meal period of not
5 less than 30 minutes, except that if the total work period per day of the
6 employee is no more than six hours, the meal period may be waived by
7 mutual consent of both the employer and employee. An employer may not
8 employ an employee for a work period of more than 10 hours per day
9 without providing the employee with a second meal period of not less than
10 30 minutes, except that if the total hours worked is no more than 12 hours,
11 the second meal period may be waived by mutual consent of the employer
12 and the employee only if the first meal period was not waived.”

13 83. Absent express permission from the Labor Commissioner, the
14 employee’s first meal break cannot commence after the sixth hour of work. *See*,
15 Labor Code § 512(b). The obvious implication, then, is that the employee’s first
16 meal break must commence by the fifth, or at least by the sixth, hour of work.
17 Moreover, under Section 512, the first meal period cannot be waived on shifts
18 longer than six hours.

19 84. The Labor Code and IWC Wage Order provisions cited above require
20 California employers to provide employees with off-duty meal periods of 30-
21 minutes on or before the fifth hour of their shifts. To satisfy this obligation,
22 California employers must: (1) make employees aware of their right to off-duty 30-
23 minute meal periods before the fifth hour of their shifts, and (2) ensure that
24 employees are actually free of job duties for thirty minutes per day on or before the
25 fifth hour of their shifts. *See, Bufil v. Dollar Financial Group, Inc.*, 162 Cal.App.
26 4th 1193, 1199 (an employer must “clearly communicate the authorization and
27 permission [to take the meal period] to its employees”); *Cicairos v. Summit*
28 *Logistics*, 133 Cal.App.4th 949, 962-963 (2005) (“... the defendant’s obligation to

1 provide the plaintiffs with an adequate meal period is not satisfied by assuming
 2 that the meal periods were taken, because employers have ‘an affirmative
 3 obligation to ensure that workers are actually relieved of all duty. ...’¹; IWC
 4 Orders, Section (11)(c) (“Unless the employee is relieved of all duty during a 30-
 5 minute meal period, the meal period shall be considered an ‘on duty’ meal period
 6 and counted as time worked.”); DLSE advisory letter, January 28, 2002, p. 1 (“In
 7 this regard rest periods differ from meal periods, during which an employer has an
 8 affirmative obligation to ensure that workers are actually relieved of all duty, not
 9 performing any work, and ... free to leave the employer’s premises”).

10 85. Concerning rest periods, section 11(A) of the Wage Order provides, in
 11 pertinent part: “Every employer shall authorize and permit all employees to take
 12 rest periods, which insofar as practicable, shall be in the middle of each work
 13 period. The authorized rest period time shall be based on the total hours worked
 14 daily at the rate of ten (10) minutes net rest time per four (4) hours or major
 15 fraction thereof.”

16 86. Section 11(B) of the Wage Order further provides, “If an employer
 17 fails to provide an employee a rest period in accordance with the applicable
 18 provisions of this order, the employer shall pay the employee one (1) hour of pay
 19 at the employee’s regular rate of compensation for each workday that the rest
 20 period is not provided.”

21 87. As alleged herein, due to the continuous loop of incoming phone calls
 22 and Defendant UHC insistence that its Telesales employees continue handling
 23 sales calls and enrollments that were on-going when the time for a meal or rest
 24

25
 26 ¹ In *Murphy v. Kenneth Cole*, (2007) 40 Cal.4th 1094, 1114, the California
 27 Supreme Court favorably cited *Cicairos*. Significantly, the California Supreme
 28 Court also denied a petition for review in *Cicairos*.

1 period arrived, Plaintiff and the members of the California Class were routinely
2 required to work through their meal periods and/or take untimely meal breaks at
3 the direction of Defendant UHCS and/or with its knowledge and acquiescence.

4 88. Under California law, employers must also record their employees'
5 meal periods: "Every employer shall keep accurate information with respect to
6 each employee, including the following: ... Meal periods ... shall also be recorded.
7 Meal periods during which operations cease ... need not be recorded." IWC Order
8 No. 7, § (7)(A)(3). Where the employer has failed to keep records required by
9 statute, the consequences of such failure should fall on the employer, not the
10 employee. In such a situation, imprecise evidence by the employee can provide a
11 sufficient basis for liability." *Hernandez v. Mendoza*, 199 Cal.App. 3d 721, 727
12 (1988).

13 89. Inasmuch as Defendant UHCS had an obligation under the record-
14 keeping requirements of the Wage Order to track meal periods unless "all work
15 ceases", Defendant UHC knew or should have known that its Telesales employees
16 were often missing meal and rest periods and/or being forced to take untimely meal
17 and rest periods, throughout the California Class Period.

18 90. By its actions in requiring its Telesales employees in California to
19 work through meal periods and/or its failure to ensure that its Telesales employees
20 were relieved of all duties for their timely off-duty meal periods and were provided
21 their rest periods on a timely basis, Defendant violated California Labor Code
22 section 226.7 and section 11(B) and 12(B) of the applicable IWC Wage Order, and
23 is liable to Plaintiff and the California Class.

24 91. As a result of the unlawful acts of Defendant UHCS, Plaintiff and the
25 California Class have been deprived of timely off-duty meal periods and timely
26 rest periods, and are entitled to recovery under Cal. Labor Code §226.7(b), as well
27 as Sections 11(B) and 12(B) of the Wage Order, in the amount of one additional
28 hour of pay at the employee's regular rate of compensation for each work period

1 during each day in which Defendant UHCS failed to provide drivers with statutory
2 timely off-duty meal periods and timely rest periods.

3 92. In *Murphy v. Kenneth Cole Productions*, 40 Cal 4th 1094, 1114
4 (2007), the California Supreme Court held that the “additional hour of pay” for
5 failure to provide an employee with meal or rest periods constitutes a wage,” rather
6 than a “penalty,” and, accordingly, is governed by the three-year statute of
7 limitations set forth in C.C.P. §338(a).

8 93. Cal. Labor Code § 218 authorizes Plaintiff and the members of the
9 California Class to bring a private right of action to recover wages due based on
10 the deprivation of timely meal periods under Cal. Labor Code § 226.7(b) as well as
11 Sections 11(B) and 12(B) of the IWC Wage Order.

12 **FIFTH CAUSE OF ACTION**

13 **CALIFORNIA CLASS ACTION CLAIM FOR FAILURE TO PAY ALL**
14 **WAGES DUE UPON SEPARATION OF EMPLOYMENT IN VIOLATION**
15 **OF CALIFORNIA LABOR CODE §§ 201-203**

16 94. Plaintiff re-alleges and incorporates by reference each and every
17 allegation set forth in the preceding paragraphs.

18 95. Sections 201 and 202 of the California Labor Code require Defendant
19 UHCS to pay all compensation due and owing to former employees at or around
20 the time each employee’s employment is terminated or ends.

21 96. Section 203 of the California Labor Code provides that if an employer
22 willfully fails to pay compensation promptly upon discharge or resignation, as
23 required by §§201-202, then the employer is liable for penalties in the form of
24 continued compensation up to thirty (30) work days.

25 97. Throughout the California Class Period, Defendant UHCS willfully
26 failed to send final paychecks to departing Telesales employees in California until
27 the next regularly scheduled payday. In other words, Defendant UHCS sent final
28 paychecks to departing Telesales employees on an untimely basis that was one to

1 14 days late. To make matters worse, Defendant UHCS's final paychecks sent to
2 departing Telesales employees, like Plaintiff, who are members of the California
3 Class, did not include all overtime wages due to them, missed meal and rest break
4 premium pay, and/or any waiting time penalty wages, as required by California
5 Labor Code §§201-202.

6 98. As a result, Defendant UHCS is now liable to Plaintiff and the other
7 members of the California Class whose employment with Defendant UHC has
8 ended within California Class Period for penalties pursuant California Labor Code
9 § 203 in the maximum amount of thirty days wages for each California Class
10 member who is no longer employed by Defendant UHC.

11 **SIXTH CAUSE OF ACTION**

12 **CALIFORNIA CLASS ACTION CLAIM FOR UNFAIR/
13 UNLAWFUL BUSINESS PRACTICES IN VIOLATION OF
14 CAL. BUS. & PROF. CODE §§17200-17208**

15 99. Plaintiff re-alleges and incorporates by reference each and every
16 allegation set forth in the preceding paragraphs.

17 100. Section 17200 of the California Business & Professions Code
18 prohibits any unlawful, unfair, or fraudulent business practices.

19 101. Labor Code section 90.5(a) states that it is the public policy of
20 California to enforce vigorously minimum labor standards in order to ensure
21 employees are not required to work under substandard and unlawful conditions,
22 and to protect employers who comply with the law from those who attempt to gain
23 competitive advantage at the expense of their workers by failing to comply with
24 minimum labor standards.

25 102. Through its actions alleged herein, Defendant UHCS has engaged in
26 unfair competition within the meaning of Cal. Bus. & Prof. Code, § 17200,
27 because Defendant UHCS's conduct has violated state wage and hour laws as
28 herein described. Indeed, Defendant UHCS's conduct as herein alleged has

1 damaged Plaintiff and the California Class members by wrongfully denying them
2 overtime pay, premium pay for missed or untimely meal and rest periods, and
3 waiting time penalty wages, and therefore was substantially injurious to Plaintiff
4 and the Class members.

5 103. Under Section 17208 of the California Business and Professions
6 Code, the statute of limitations for a claim under Section 17200 is four years.
7 Accordingly, the actionable Class Period for this cause of action is March 19, 2006
8 through the present (i.e., the "California Class Period").

9 104. Beginning at a date unknown to Plaintiff, but at least as early as
10 March 19, 2006, Defendant UHCS committed, and continues to commit, acts of
11 unfair competition, as defined in § 17200 et seq. of the California Business and
12 Professions Code by, among other things, engaging in the acts and practices
13 described above.

14 105. Defendant UHCS engaged in unfair competition in violation of Cal.
15 Bus & Prof. Code, § 17200 et seq by violating, inter alia, each of the following:

- 16 a. Cause of Action One as stated above;
- 17 b. Cause of Action Two as stated above;
- 18 c. Cause of Action Three as stated above;
- 19 d. Cause of Action Four as stated above;
- 20 e. Cause of Action Five as stated above;
- 21 f. 29 U.S.C. § 207(a);
- 22 g. Cal. Labor Code § 510;
- 23 h. Cal. Labor Code §226;
- 24 i. Cal. Labor Code § 226.7;
- 25 j. Cal. Labor Code § 512;
- 26 k. Cal. Labor Code § 201-203; and
- 27 l. California IWC Orders No. 4-2001, Sections 11 and 12 (as
28

1 amended on January 1, 2002, January 1, 2003, January 1, 2004,
2 July 2, 2004, January 1, 2005 and January 1, 2006).

3 106. Defendant's course of conduct, act and practice in violation of the
4 California laws mentioned in each paragraph above constitute separate and
5 independent violations of 17200 et seq. of the California Business and Professions
6 Code.

7 107. The harm to Plaintiff and the California Class members in being
8 wrongfully denied overtime pay, meal and rest period premium pay and waiting
9 time penalties, outweighs the utility, if any, of Defendant UHCS's policies/
10 practices and, therefore, Defendant UHCS's actions described herein constitute an
11 unfair business practice or act within the meaning of California Business and
12 Professions Code § 17200.

13 108. The unlawful, unfair and fraudulent business practices and acts of
14 Defendant UHCS, as described above, have injured Plaintiff and the California
15 Class members in that they were wrongfully denied overtime wages due, and
16 premium wages due for missed or untimely meal and rest periods, and waiting time
17 penalty wages.

18 109. Defendant UHCS's failure to pay legally required overtime wages for
19 all time worked, its failure to pay missed meal and rest period premium pay, and its
20 failure to pay waiting time penalties, constitute unlawful acts prohibited by the
21 California Unfair Practices Act, Business & Professions Code 17200 et seq.

22 110. As a result of these unlawful acts, Defendant UHCS has reaped unfair
23 benefits and illegal profits, at the expense of Plaintiff and all California Class
24 Members. Defendant UHCS must make restitution and/or be subject to other
25 equitable relief pursuant to California Business & Professions Code 17203. All
26 such remedies are cumulative of relief available under other laws, pursuant to
27 California Business & Professions Code 17205.

1 111. Plaintiff requests relief as described below on behalf of himself and
2 all California Class Members.

3 **IX. DEMAND FOR JURY TRIAL**

4 112. Plaintiff hereby demands trial by jury on his individual, collective
5 and/or class-wide claims stated herein against Defendant

6 **X. PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff requests the following relief:

8 **A. COLLECTIVE FLSA CLAIM**

9 1. Authorization to issue notice pursuant to 29 U.S.C. §216(b) at the
10 earliest possible time to all current and former non-exempt Telesales employees
11 employed by Defendant UHCS nationwide as LGs, LSRs and LPs at any time
12 during the three years immediately preceding the filing of this action, informing
13 them that this action has been filed, of the nature of the action, and of their right to
14 opt into this lawsuit if they worked in excess of forty hours in a week during the
15 past three years, and were not paid as required by the FLSA;

16 2. A declaratory judgment that Defendant has violated the overtime
17 wages provision of the FLSA, 29 U.S.C. 207(a), as to the Plaintiff and similarly
18 situated persons who opt into this action;

19 3. A declaratory judgment that Defendant's violations of the FLSA were
20 willful.

21 4. An award to Plaintiff and other similarly situated persons who opt into
22 this action of damages in the amount of unpaid compensation to be proven at trial,
23 pursuant to the FLSA.

24 5. An award to Plaintiff and other similarly situated persons who opt into
25 this action of liquidated damages in an amount equal to the overtime compensation
26 shown to be owed to them pursuant to 29 U.S.C. §216(b); or, if liquidated damages
27 are not awarded, then in the alternative, prejudgment interest;

6. An award to Plaintiff and other similarly situated persons who opt into this action of reasonable attorneys' fees and costs, pursuant to 29 U.S.C. §216(b); and

7. An award of such other and further relief as this Court may deem appropriate.

B. CLASS ACTION CLAIMS UNDER CALIFORNIA LAW

1. Certification of the California state law claims as a class action, pursuant to Fed. R. Civ. P. 23(b)(3), on behalf of the proposed California Class;

2. Class notice, pursuant to Fed. R. Civ. P. 23(c)(2), to all non-exempt Telesales employees who were employed by Defendant UHCS in California since March 19, 2006, pursuant to the statute of limitations on the California Unfair Practices Act claims, Business & Professions Code 17208;

3. A declaratory judgment that Defendant UHCS has violated the overtime provisions of the California Labor Code Section 510 as to the Plaintiff and California Class Members.

4. An award to Plaintiff and the California Class Members in the amount of unpaid overtime compensation to be proven at trial, plus interest, and reasonable attorneys' fees, pursuant to California Labor Code 510 and 1194.

5. A declaratory judgment that Defendant UHCS violated Labor Code §§226 and 226.3 by issuing inaccurate weekly wage statements to Plaintiff and Class Members in that, as set forth above, the paystubs contained inaccurate information about the total number of hours worked, the overtime wages earned, and the total wages earned during the California Class Period.

6. An award to Plaintiff and the California Class Members of \$50 for each initial pay period in which a violation of §226 occurred and \$100 for each subsequent pay period in which a violation of §226 occurred, not to exceed \$4,000 per person, as well as an award of costs and reasonable attorneys' fees;

1 7. A declaratory judgment that Defendant UHCS has violated California
2 Labor Code § 226.7, § 512 and Sections 11 and 7 of IWC Wage Order No. 4;

3 8. Pursuant to Cal. Labor Code § 226.7 and Section 11 of the IWC Wage
4 Order, an award to Plaintiff and the California Class Members for an additional
5 hour of pay at the employee's regular rate of compensation for each day that meal
6 periods were missed/not provided;

7 9. Pursuant to Cal. Labor Code § 226.7 and Section 12 of IWC Wage
8 Order No. 7, an award to Plaintiff and the Class Members for an additional hour
9 of pay at the employee's regular rate of compensation for each day that rest periods
10 were missed/not permitted;

11 10. A declaratory judgment that, as to Plaintiff and California Class
12 Members who are former employees, Defendant UHCS violated California Labor
13 Code §§201-203 for willful failure to pay compensation at the time of termination
14 of employment, resulting in unpaid waiting time penalties;

15 11. An award to Plaintiff and Class Members of the Class who are former
16 employees of Defendant of payments due to them as waiting time penalties
17 pursuant to California Labor Code §203 and reasonable attorneys' fees;

18 12. A declaratory judgment that Defendant violated California Business &
19 Professions Code §§17200-17208 by failing to pay their non-exempt employees
20 overtime compensation, and/or to provide accurate itemized statements with each
21 payment of wages, as required by California law;

22 13. An order requiring Defendant to pay restitution of all amounts owed
23 to Plaintiff and the Class Members, for Defendant's failure to pay legally required
24 overtime compensation, and/or to provide accurate itemized statements of total
25 hours worked with each payment of wages, in an amount according to proof,
26 pursuant to California Business & Professions Code §17203;

1 14. An award to Plaintiff and Class Members of reasonable attorneys'
2 fees and costs, pursuant to California Civil Procedure Code § 1021.5, California
3 Labor Code §§226, 1194, 2802, and/or other applicable law;

4 15. Pursuant to Cal. Labor Code Section § 218.6, an award of all accrued
5 interest from the date the wages were due and payable at the legal interest rate; and

6 16. An award of such other and further relief as this Court may deem
7 appropriate.

8
9 Date: March 19, 2010

Respectfully submitted,

ACKERMANN & TILAJEF, P.C.

10
11
12 By: _____

Craig J. Ackermann

13
14
15 **WASSERMAN, COMDEN,**
16 **CASSELMAN & ESENSTEN, L.L.P.**

17
18 By: _____

Melissa M. Harnett

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Christina A. Snyder and the assigned discovery Magistrate Judge is Arthur Nakazato.

The case number on all documents filed with the Court should read as follows:

CV10- 2027 CAS (ANx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====:

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

☒ **Western Division**
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

☐ **Southern Division**
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

☐ **Eastern Division**
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

Name & Address:

Craig J. Ackermann
 Ackermann & Tilajef, P.C.
 1180 S. Beverly Drive, Suite 610
 Los Angeles, CA 90035

UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA

Robert Cohen, individually and on behalf
 of all others similarly situated

PLAINTIFF(S)

v.

United HealthCare Services, Inc.

DEFENDANT(S).

CASE NUMBER

10-2027 CAS (ANX)

SUMMONS

TO: DEFENDANT(S): United HealthCare Services, Inc.

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached ☒ complaint ☐ amended complaint ☐ counterclaim ☐ cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Craig J. Ackermann, whose address is 1180 S. Beverly Drive, Suite 610, Los Angeles, CA 90035. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Clerk, U.S. District Court

19 MAR 2010

Dated: _____

SHEA BOURGEOIS

By: _____

Deputy Clerk

(Seal of the Court) **SEAL**

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

I (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/> Robert Cohen, individually and on behalf of all others similarly situated	DEFENDANTS United HealthCare Services, Inc.
(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) Ackermann & Tilajef, P.C., 1180 S Beverly Drive, Ste 610, Los Angeles, CA 90035, (310) 277-0614; Wasserman, Comden, Casselman & Esenstein, 5567 Reseda Blvd, Ste 330, P.O. Box 7033, Tarzana, CA 91357, (818) 705-6800	Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an X in one box only.) <input type="checkbox"/> 1 U.S. Government Plaintiff <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.) <table style="width:100%; border: none;"> <tr> <td style="width:30%;">Citizen of This State</td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> <td style="width:40%;">Incorporated or Principal Place of Business in this State</td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> </tr> <tr> <td></td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td></td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>	Citizen of This State	PTF	DEF	Incorporated or Principal Place of Business in this State	PTF	DEF		<input type="checkbox"/> 1	<input type="checkbox"/> 1		<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
Citizen of This State	PTF	DEF	Incorporated or Principal Place of Business in this State	PTF	DEF																				
	<input type="checkbox"/> 1	<input type="checkbox"/> 1		<input type="checkbox"/> 4	<input type="checkbox"/> 4																				
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5																				
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

IV. ORIGIN (Place an X in one box only.) <input checked="" type="checkbox"/> 1 Original Proceeding <input type="checkbox"/> 2 Removed from State Court <input type="checkbox"/> 3 Remanded from Appellate Court <input type="checkbox"/> 4 Reinstated or Reopened <input type="checkbox"/> 5 Transferred from another district (specify): <input type="checkbox"/> 6 Multi-District Litigation <input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judge
--

V. REQUESTED IN COMPLAINT: JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No (Check 'Yes' only if demanded in complaint.)	MONEY DEMANDED IN COMPLAINT: \$ 10 million +
---	---

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.) Fair Labor Standards Act, 29 U.S.C. 216(b), for denial of compensation for "off-the-clock" working time
--

VII. NATURE OF SUIT (Place an X in one box only.)
--

OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	TORTS PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	TORTS PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General Habeas Corpus <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition FORFEITURE / PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety /Health <input type="checkbox"/> 690 Other	LABOR <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
---	--	--	---	--	--

FOR OFFICE USE ONLY: Case Number: _____

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☒ No ☐ Yes
If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☒ No ☐ Yes
If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) ☐ A. Arise from the same or closely related transactions, happenings, or events; or
☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or
☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named plaintiff resides.
☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Orange	

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named defendant resides.
☐ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles	Minnesota

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH claim arose.
 Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Orange	

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER): _____

Date 3/19/10

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))